

ASSASSINATION MATERIALS DISCLOSURE ACT OF 1992

JUNE 29, 1992.—Ordered to be printed

Mr. CONYERS, from the Committee on Government Operations,
submitted the following

R E P O R T

[To accompany H.J. Res. 454 which on March 26, 1992, was referred jointly to the Committee on House Administration, the Committee on Government Operations, the Committee on Rules, and the Committee on the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Operations, to whom was referred the joint resolution (H.J. Res. 454) to provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy, having considered the same, report favorably thereon with an amendment and recommend that the joint resolution as amended do pass.

The amendment is as follows:

Strike out all after the resolving clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Assassination Materials Disclosure Act of 1992".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) Legitimate confidentiality concerns based upon national security, personal privacy, law enforcement, and other recognized interests diminish over time.

(2) There is a compelling public interest that all government records be eventually made available to the public.

(3) There is a compelling public interest that all materials concerning the assassination of President John F. Kennedy be made available to the public at the earliest possible date.

(4) Executive Order 12356, National Security Information, as implemented by the executive branch, has precluded the timely release of materials relating to the assassination of President Kennedy.

(5) Section 552 of title 5, United States Code (popularly known as the "Freedom of Information Act"), as implemented by the executive branch, has failed

to secure the timely release of materials relating to the assassination of President Kennedy.

(6) The President's Commission on the Assassination of President Kennedy and the President's Commission on CIA Activities in the United States were Federal agencies whose records are subject to Federal records laws.

(7) Only in the rarest cases is there any legitimate need for continued secrecy or classification of materials relating to the assassination of President Kennedy.

(b) PURPOSE.—The purpose of this joint resolution is to make available to the public all materials relating to the assassination of President Kennedy at the earliest possible date.

SEC. 3. DEFINITIONS.

For the purposes of this joint resolution:

(1) The term "Archivist" means the Archivist of the United States.

(2) The term "assassination material" means—

(A) means any record that is determined by the Review Board under section 6(b) to be an assassination material; and

(B) does not include any item donated by the family of President Kennedy to the National Archives pursuant to the deed of gift dated October 29, 1966.

(3) The term "Collection" means the President Kennedy Assassination Materials Collection established under section 4.

(4) The term "custodian of records" means—

(A) the Committee on House Administration of the House of Representatives, for records of the House Committee;

(B) the Select Committee on Intelligence of the Senate, for records of the Senate Committee;

(C) the Archivist of the United States, for records of the President's Commission on the Assassination of President Kennedy and records of the President's Commission on CIA Activities in the United States; and

(D) the executive branch official designated by the head of each executive agency, for each executive agency which has possible assassination materials in its possession.

(5) The term "executive agency" means—

(A) has the meaning given to the term "agency" by sections 551(1) and 552(f) of title 5, United States Code; and

(B) includes the Executive Office of the President, the Executive Office of the Vice President, and all components thereof.

(6) The term "Executive Director" means the Executive Director of the Review Board appointed under section 10(c).

(7) The term "House Committee" means the Select Committee on Assassinations of the House of Representatives.

(8) The term "National Archives" means the National Archives and Records Administration and all components thereof, including the Presidential Libraries.

(9) The term "originating body" means the executive agency, Presidential commission, or Presidential or Congressional committee that created a record or obtained a record from a source other than another entity of the Federal Government.

(10) The term "public interest" includes the compelling public interests found by the Congress in section 2(a) (2) and (3).

(11) The term "record" includes—

(A) a document, book, paper, map, or photograph;

(B) machine readable, computerized, digitized, or electronic information, regardless of the medium on which it is stored; and

(C) any other documentary material, regardless of its physical form or characteristics.

(12) The term "record of an official investigation" means any record that was created, obtained, or generated by—

- (A) a review of the assassination of President Kennedy conducted by any of—
 - (i) the President's Commission on the Assassination of President Kennedy (popularly known as the Warren Commission);
 - (ii) the Federal Bureau of Investigation;
 - (iii) the Secret Service;
 - (iv) the Central Intelligence Agency;

(v) the President's Commission on CIA Activities in the United States (popularly known as the Rockefeller Commission);

(vi) the Senate Committee; and

(vii) the House Committee;

(B) any activity conducted by an executive agency in support of a review or activity described in subparagraph (A); and

(C) any other activity determined by the Review Board to be relevant to the assassination of President Kennedy.

(13) The term "Review Board" means the Assassination Materials Review Board established by section 10(a).

(14) The term "Senate Committee" means the Select Committee to Study Governmental Operations With Respect to Intelligence Activities of the Senate.

SEC. 4. PRESIDENT KENNEDY ASSASSINATION MATERIALS COLLECTION.

(a) ESTABLISHMENT.—Not later than 60 days after the date of the enactment of this joint resolution, the Archivist shall establish in the National Archives a collection which shall be known as the "President Kennedy Assassination Materials Collection".

(b) CONTENTS.—The Collection shall consist of—

(1) all records transferred under section 5(a)(1);

(2) all assassination materials transferred under section 5(c);

(3) determinations and recommendations submitted under section 6(f);

(4) all statements submitted under section 7(c)(2);

(5) all summaries transmitted under section 7(d), and

(6) such other records relating to the assassination of President Kennedy as the Archivist considers appropriate.

(c) PUBLIC AVAILABILITY.—

(1) IN GENERAL.—The Archivist shall make available for public inspection and copying all records in the Collection.

(2) FEES FOR COPYING.—The head of an executive agency shall charge fees and grant waivers for such fees, in accordance with section 552(a)(4) of title 5, United States Code, for providing copies of records in the Collection.

(d) PRINTING AND DISSEMINATION OF ASSASSINATION MATERIALS.—

(1) SELECTION.—The National Historical Publications and Records Commission shall promptly provide for the selection and preparation for publication of materials in the Collection that are of broad historical interest.

(2) PRINTING AND DISTRIBUTION.—The Public Printer shall—

(A) publish and make available for sale to the public materials selected by the Commission; and

(B) provide copies of all such publications to Federal depositories in accordance with chapter 19 of title 44, United States Code.

SEC. 5. TRANSFER OR AVAILABILITY OF RECORDS OF OFFICIAL INVESTIGATIONS.

(a) EXECUTIVE AGENCY RECORDS.—

(1) TRANSFER TO ARCHIVIST.—The head of each executive agency may transfer to the Archivist for inclusion in the Collection each record of an official investigation for which the agency is a custodian of records.

(2) AVAILABILITY TO REVIEW BOARD.—On the date which is 60 days after the date of the enactment of this joint resolution, the head of each executive agency shall make available to the Review Board each record of an official investigation for which the agency is a custodian of records and which has not been transferred from the agency to the Archivist under paragraph (1).

(b) CONGRESSIONAL RECORDS.—Not later than 60 days after the date of the enactment of this joint resolution, the Archivist shall make available to the Review Board each record of an official investigation for which the Committee on House Administration of the House of Representatives or the Select Committee on Intelligence of the Senate is a custodian of records.

(c) OTHER TRANSFER OR ASSASSINATION MATERIALS.—The custodian of records for a record of an official investigation shall, after the date which is 30 days after the date of the receipt of a recommendation of the Review Board under section 6(b) with respect to the record and by no later than 60 days after that date of receipt, transfer the record to the Archivist for inclusion in the Collection if—

- (1) the Review Board determines under section 6(b) that the record is an assassination material;
- (2) the Review Board recommends under section 6(b) that the record should be transferred to the Archivist for inclusion in the Collection; and
- (3) that transfer and inclusion is not postponed in accordance with section 7(b).

SEC. 6. REVIEWS BY REVIEW BOARD.

(a) REVIEWS OF TRANSFERRED MATERIALS.—The Review Board shall review—

- (1) each record of an official investigation made available under section 5(a)(2) or (b); and
- (2) all other records available to the Review Board that it has reason to believe are relevant to the assassination of President Kennedy.

(b) DETERMINATIONS AND RECOMMENDATIONS.—

- (1) IN GENERAL.—Upon completing a review under subsection (a) with respect to a record, the Review Board shall—

- (A) determine whether the record is an assassination material; and
- (B) in the case of an assassination material and based on the criteria set forth in section 7(a), submit to the custodian of records and, if different, the originating body for the material a recommendation that the record—
 - (i) should be transferred to the Archivist for inclusion in the Collection; or
 - (ii) qualifies for postponement under that section.

- (2) CONTENTS.—Each determination and each recommendation of the Review Board shall—

- (A) identify the record that is the subject of the determination or recommendation; and

(c) DETERMINATION OF ASSASSINATION MATERIAL.—The Review Board shall determine under subsection (b) that a record is an assassination material unless the Review Board determines by clear and convincing evidence that the record does not have any relevance to the assassination of President Kennedy.

- (d) PRESUMPTION FOR TRANSFER.—The Review Board shall recommend under subsection (b)(1) that an assassination material should be transferred to the Archivist for inclusion in the Collection, unless there is clear and convincing evidence that the material qualifies for postponement under section 7(a).

- (e) REVIEW OF PORTIONS THAT CAN BE SEPARATED.—If the Review Board determines that an assassination material qualifies for postponement under section 7(a), the Review Board shall separately review and make final recommendations under this section with respect to any portion of the material that can be reasonably segregated.

- (f) SUBMISSIONS TO ARCHIVIST.—The Review Board shall submit to the Archivist for inclusion in the Collection—
 - (1) each determination under subsection (b)(1)(A) that a record of an official investigation is not an assassination material; and
 - (2) each recommendation under subsection (b)(1)(B) that an assassination material qualifies for postponement.

SEC. 7. POSTPONEMENT OR TRANSFER OF ASSASSINATION MATERIAL.

- (a) QUALIFICATION FOR POSTPONEMENT.—Assassination material qualifies for postponement under this subsection only if one or more of the following criteria are met:
 - (1) The threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public availability of the assassination material is of such gravity that it outweighs the public interest, and such public availability would reveal—
 - (A) an intelligence agent whose identity currently requires protection;
 - (B) an intelligence source or method which is currently utilized or reasonably expected to be utilized by the United States Government and which has not been officially disclosed, and the disclosure of which would interfere with the conduct of intelligence activities; or
 - (C) any other matter currently relating to the military defense, intelligence operations, or conduct of foreign relations of the United States, the public availability of which would demonstrably impair the national security of the United States.
 - (2) The public availability of the assassination material would disclose the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to such person.
 - (3) The public availability of the assassination material could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest.
 - (4) The public availability of the assassination material would constitute a substantial and unjustified violation of an express, documented understanding

of confidentiality between a Government agent and a cooperating individual or a foreign government.

- (5) The public availability of the assassination material would disclose a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and that public availability would be so harmful that it outweighs the public interest.

- (b) POSTPONEMENT.—The transfer of assassination material to the Archivist for inclusion in the Collection shall be postponed for purposes of section 5(c)(3) notwithstanding any recommendation of the Review Board, if—

- (1) in the case of assassination material for which the originating body is the Senate Committee, the Senate certifies that the material qualifies for postponement under subsection (a) by agreeing to a resolution to that effect—

- (A) by a majority of members present and voting; and

- (B) by not later than 30 days after the date on which the Review Board submits a recommendation under section 6(b) with respect to the material;

- (2) in the case of assassination material for which the originating body is the House Committee, the House certifies that the material qualifies for postponement under subsection (a) by agreeing to a resolution to that effect—

- (A) by a majority of members present and voting; and

- (B) by not later than 30 days after the date on which the Review Board submits a recommendation under section 6(b) with respect to the material; and

- (3) in the case of assassination material for which the originating body is an executive agency, the President certifies to the Review Board by not later than 30 days after the date on which the Review Board submits a recommendation under section 6(b) with respect to the material that the material qualifies for postponement under subsection (a).

(c) CERTIFICATION BY PRESIDENT.—

- (1) AUTHORITY NONDELEGABLE.—The authority of the President to certify under subsection (b)(3) may not be delegated to any other person.

- (2) STATEMENT.—If the President makes a certification under subsection (b)(3) for an assassination material, the President shall—

- (A) submit to the Committee on House Administration of the House of Representatives, to the Select Committee on Intelligence of the Senate, and to the Archivist for inclusion in the Collection a written statement that—

- (i) identifies the assassination material with specificity; and
- (ii) sets forth the basis for the certification, including the criteria under subsection (a) under which the material qualifies for postponement; and

- (B) publish the statement in the Federal Register by not later than 10 days after the date of that submission.

- (d) SUMMARY OF POSTPONED ASSASSINATION MATERIALS.—The Review Board may, after consulting with the custodian of records and, if different, the originating body for an assassination material the transfer of which is postponed under this section, prepare and transmit a summary of the assassination material to the Archivist for inclusion in the Collection.

SEC. 8. MARKING AND REVIEW OF POSTPONED MATERIALS.

- (a) MARKING.—The Review Board shall—

- (1) mark any portion of assassination material that is not transferred to the Archivist for inclusion in the Collection pursuant to section 5(c), in accordance with a system of identification established by the Review Board; and

- (2) append to that portion a statement of the Review Board designating a specified time at which, or a specified occurrence following which, the material shall be reconsidered for inclusion in the Collection pursuant to the criteria set forth in section 7(a).

- (b) TRANSFER.—The Review Board shall transfer all assassination material marked under subsection (a), and all appendices thereto, to the Archivist.

- (c) REVIEW.—The Archivist shall, by not later than the time or the occurrence specified under subsection (a)(2) for an assassination material—

- (1) review the assassination material and any appendices thereto; and
- (2) resubmit the assassination material to the Review Board, if it is still in existence, or to the originating body, if the Review Board has terminated.

SEC. 9. PUBLIC AVAILABILITY OF OTHER INFORMATION.

- (a) MATERIALS UNDER SEAL OF COURT.—The Review Board may request the Department of Justice to petition, or through its own counsel may petition, any court

in the United States or a foreign country, to make publicly available any information relevant to the assassination of President Kennedy that is held under seal of the court.

(b) **GRAND JURY MATERIALS.**—

(1) **PETITIONS.**—The Review Board may request the Attorney General to petition, or through its own counsel may petition, any court in the United States to make publicly available any information relevant to the assassination of President Kennedy that is held under the injunction of secrecy of a grand jury.

(2) **TREATMENT UNDER FEDERAL RULES.**—A petition under this subsection is deemed to constitute a showing of particularized need under Rule 6 of the Federal Rules of Criminal Procedure.

(c) **AUTOPSY MATERIALS.**—The Review Board shall, pursuant to the terms of the deed of gift dated October 29, 1966, seek access to the autopsy photographs and x rays donated to the National Archives by the family of President Kennedy. The Review Board shall, as soon as practicable, submit to the Speaker of the House of Representatives and the Select Committee on Intelligence of the Senate a report on the status of those records and on access to those records by individuals consistent with the deed of gift.

(d) **COOPERATION OF EXECUTIVE BRANCH.**—

(1) **ATTORNEY GENERAL.**—The Attorney General shall assist the Review Board in good faith to unseal any records that the Review Board determines to be relevant and held under seal by a court or under the injunction of secrecy of a grand jury.

(2) **SECRETARY OF STATE.**—The Secretary of State shall, as soon as possible—
(A) contact the Government of the Republic of Russia and seek the public availability of all records of the Komitet Gosudarstvennoy Bezopasnosti (KGB) and the Glavnoye Razvedyvatelnoye Upravleniye (GRU), that are relevant to the assassination of President Kennedy; and
(B) contact any other foreign government that may hold information relevant to the assassination of President Kennedy, and seek the public availability of such information.

(3) **OTHER EXECUTIVE AGENCIES.**—The head of each executive agency shall cooperate fully with the Review Board to seek the public availability of all information relevant to the assassination of President Kennedy.

SEC. 10. ASSASSINATION MATERIALS REVIEW BOARD.

(a) **ESTABLISHMENT AND FUNCTIONS.**—There is established as an independent agency a board which shall be known as the "Assassinations Materials Review Board". The Review Board shall perform such functions as are assigned to it by this joint resolution.

(b) **MEMBERSHIP.**—

(1) **IN GENERAL.**—The Review Board shall consist of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate—
(A) from among distinguished and impartial private individuals who are citizens of the United States;

(B) without regard to political affiliation; and
(C) by not later than 60 days after the date of the enactment of this joint resolution.

(2) **CHAIRPERSON.**—The President shall designate one of the members of the Review Board as the Chairperson of the Review Board.

(c) **EXECUTIVE DIRECTOR.**—The President, by and with the advice and consent of the Senate, shall appoint an individual of integrity and impartiality to serve as Executive Director of the Review Board.

(d) **LIMITATION.**—A person who has been employed by any intelligence or law enforcement agency of the United States Government, or who has had any involvement with any review referred to in section 3(12) (A) or (B) may not serve as a member of the Review Board or as the Executive Director.

(e) **RECOMMENDATIONS.**—Prior to nominating any person to be a member of the Review Board or to be Executive Director, the President shall solicit and consider the recommendations of diverse representatives of general and scholarly interest in assassination materials, including the American Political Science Association, the American Society of Newspaper Editors, the Organization of American Historians, the National Security Archive, the Organization of American Historians, the Society of American Archivists, the Association of American Publishers, the Center for National Security Studies, the American Historical Society, and the American Newspaper Publishers Association, except that the President is not required to con-

sider any recommendation that is submitted after the date which is 60 days after the date of the enactment of this Act.

(f) **COMPENSATION.**—

(1) **PAY.**—Members of the Review Board and the Executive Director shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board.

(2) **TRAVEL EXPENSES.**—Members of the Review Board shall be allowed reasonable travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under chapter 1 of chapter 57 of title 5, United States Code, while away from the member's home or regular place of business in the performance of services for the Review Board.

(g) **REMOVAL.**—

(1) **IN GENERAL.**—No member of the Review Board or the Executive Director shall be removed from office, other than for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's or Executive Director's duties.

(2) **REPORT.**—Within 10 days after any date on which a member of the Review Board is removed from office, the President shall submit to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate a report specifying the facts found and the grounds for the removal.

(h) **OVERSIGHT.**—The Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate shall have continuing oversight jurisdiction with respect to the official conduct of the Review Board. The Review Board shall cooperate with the exercise of such oversight jurisdiction.

(i) **SUPPORT SERVICES.**—

(1) **GENERAL SERVICES ADMINISTRATION.**—The Administrator of General Services shall provide administrative and support services to the Review Board on a reimbursable basis, including office space and clerical and personnel support.

(2) **DETAILS.**—At the request of the Executive Director, the head of an executive agency shall detail employees of the agency to assist the Review Board in carrying out this joint resolution. Any employee detailed to the Review Board shall be detailed without reimbursement, and without interruption or loss of civil service status or privilege.

(3) **SERVICES.**—The Review Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(j) **INTERPRETIVE GUIDELINES.**—The Review Board may issue interpretive guidelines to assist in implementing the purposes of this joint resolution.

(k) **TERMINATION.**—

(1) **IN GENERAL.**—The Review Board shall terminate on the date which is 2 years after the date of the enactment of this joint resolution, except the Review Board may, by majority vote, extend its term for an additional 1-year period if it has not completed its work within such 2-year period.

(2) **NOTICE OF TERMINATION.**—At least 30 days before completing its work, the Review Board shall provide written notice to the President and the Congress of its intention to terminate its operations at a specified date.

(3) **TRANSFER OF REVIEW BOARD RECORDS.**—Upon its termination, the records of the Review Board shall be transferred to the Archivist in accordance with section 2107(2) of title 44, United States Code.

(l) **ACCESS TO RECORDS.**—
(1) **ACCESS OF REVIEW BOARD AND EXECUTIVE DIRECTOR.**—An executive agency shall upon request promptly provide to a Member of the Review Board, the Executive Director, or their designee, access to any record requested by the Review Board.

(2) **MAINTENANCE OF CONFIDENTIALITY.**—Any person who obtains access under this joint resolution to any record that is restricted by law for reason of national security or otherwise—

(A) shall maintain the same level of confidentiality for that record as is required of the head of the originating body for the record; and

(B) shall be subject to the statutory penalties for unauthorized disclosure or use that apply to officers and employees of the originating body for the record.

SEC. 11. RULES OF CONSTRUCTION.

(a) **PRECEDENCE OVER OTHER LAW.**—Any provision of this joint resolution that requires public availability of a record shall take precedence over any other law that would otherwise prohibit such public availability, including any judicial decision, common law doctrine, Executive order, or executive agency regulation.

(b) **FREEDOM OF INFORMATION ACT.**—Nothing in this joint resolution shall be construed to eliminate or limit—

- (1) any right to file a request for an assassination material, with any executive agency other than the Review Board;
- (2) any right to seek judicial review pursuant to section 552 of title 5, United States Code, of the decision of such an agency with respect to such a request; or
- (3) any requirement that such an agency make available to the public in accordance with that section any assassination material.

(c) **EXISTING AUTHORITY.**—Nothing in this joint resolution revokes or limits any existing authority or obligation of the President, any executive agency, the Senate, the House of Representatives, or any other entity of the Federal Government, to make publicly available records in its possession, custody, or control.

SEC. 12. CONGRESSIONAL RULEMAKING AUTHORITY.

Sections 5(b) and 7(b) (1) and (2) are adopted—

- (1) as an exercise of the rulemaking authority of the House of Representatives and the Senate; and
- (2) recognizing the constitutional prerogative of each House of the Congress to modify its rules relating to the procedures of that House.

EXPLANATION OF AMENDMENT

Inasmuch as House Joint Resolution 454 was ordered reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

SUMMARY AND PURPOSE

The purpose of House Joint Resolution 454 is to make available to the public all materials relating to the assassination of President John F. Kennedy at the earliest possible date.

Nearly 1 million pages of records compiled by official investigations of the assassination have not been made available to the public. Almost thirty years have passed since the assassination, and the continued withholding of these records is unjustified.

Current law, as implemented by the executive branch, has failed to secure the timely release of materials relating to the assassination. In addition, many documents pertaining to the assassination are classified. Executive Order 12356, National Security Information, has precluded the release of these documents.

From the issuance of the Warren Commission Report in 1964, many Americans have expressed doubts about its findings and speculated about the events surrounding the assassination. Continued, unjustified secrecy increases those doubts and speculation, and fuels a growing distrust in the institutions of government.

The Committee believes that prompt disclosure of all records relating to the assassination is the best way to fulfill the American people's right to know what happened to their President. It is the Committee's intent to establish through House Joint Resolution 454 a process that expeditiously releases all records relating to the assassination.

House Joint Resolution 454 establishes a Review Board of five members to review government records and to determine whether records are relevant to the assassination. The resolution further requires the Review Board to recommend whether those records should be made available to the public, or whether narrow privacy, national security, or law enforcement interests exist which would justify postponing such release. In addition, the joint resolution requires all executive agencies to make available to the Review Board all records which the Review Board decides may be relevant. It also establishes within the National Archives a publicly available President Kennedy Assassination Materials Collection as a central repository of appropriate records.

HEARINGS

House Joint Resolution 454 includes provisions which are within the legislative jurisdiction granted to the Committee on Government Operations by House rules X(1)(3) and X(1)(5). House rule X(1)(3) grants the Committee on Government Operations jurisdiction over measures effecting reorganizations in the executive branch of government including the creation of certain independent agencies. House rule X(1)(5) grants the Committee on Government Operations jurisdiction over the National Archives. That jurisdiction includes wide-ranging issues affecting the collection, maintenance, and dissemination of records and information by the Federal government. Since House Joint Resolution 454 establishes a Review Board as an independent agency, creates a process for reviewing and disseminating Federal records to the public, and confers additional duties and responsibilities on the National Archives, it falls within the legislative jurisdiction of this Committee.

On April 28, 1992, and May 15, 1992, the Legislation and National Security Subcommittee of the Committee on Government Operations held hearings on House Joint Resolution 454.

At the April 28, 1992, hearing, the following witnesses testified on the joint resolution:

Representative Louis Stokes of Ohio;
Representative Lee H. Hamilton of Indiana;
Oliver Stone, director of the film, *JFK*;

Howard P. Willens, Esq., former counsel to the President's Commission on the Assassination of President Kennedy (the Warren Commission);

James H. Johnston, Esq., former counsel to the Select Committee to Study Governmental Operation With Respect to Intelligence Activities of the Senate (the Church Committee);

Herbert S. Parmet, Ph.D., Distinguished Professor of History, Queensborough Community College and the Graduate School of the City University of New York;

Leslie Harris, Esq., Chief Legislative Counsel, Washington Office of the American Civil Liberties Union; and,

Harold C. Relyea, Ph.D., Specialist, American National Government, Congressional Research Service.

At the May 15, 1992, hearing, the following witnesses testified on the joint resolution:

Robert M. Gates, Director of Central Intelligence;

Floyd I. Clarke, Deputy Director, Federal Bureau of Investigation;

David G. Leitch, Esq., Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice; and,

Don W. Wilson, Ph.D., Archivist of the United States.

On June 3, 1992, a markup of House Joint Resolution 454 was held by the Legislation and National Security Subcommittee. An amendment in the nature of a substitute was proposed by Chairman Conyers and accepted by voice vote.

On June 3, 1992, a markup of House Joint Resolution 454, as amended, was held by the Committee on Government Operations, House Joint Resolution 454, as amended, was adopted and reported favorably to the House of Representatives by voice vote.

DISCUSSION

The assassination of President John F. Kennedy in Dallas, Texas, on November 22, 1963, was a singular defining moment in this nation's history. The impact of the President's murder on the nation's psyche and on the course it has taken since that event will be constantly reassessed by scholars and historians looking back at this period with the benefit of time and hindsight.

The murder itself continues to perplex and to confound the American people, many of whom still have grave doubts about who killed the President and why. The conclusion of the Warren Commission, that the President was killed by a lone assassin acting by himself, has done little to assuage the lingering doubts of the American people. Despite its composition of distinguished Congressmen, Justices, and high-level Federal officials, as many as three out of four Americans believe the murder was the result of a conspiracy.¹

It is neither the purpose of this joint resolution, nor the intent of this Committee, to reinvestigate the assassination of President Kennedy. Indeed, it is doubtful that the public would ever be satisfied with results of another governmental review of the President's death.

Instead, the Committee believes that historians, scholars, researchers, journalists, and the American public must draw their own conclusions about the assassination from the vast volumes of evidence collected by government investigating bodies and others over the past 29 years. The purpose of the joint resolution, and the intent of the Committee, is simply to make publicly available all of these materials at the earliest possible date.

There have been four official government investigations of the assassination² that have come to somewhat different conclusions

¹ See, testimony of Representative Lee. H. Hamilton, "House Joint Resolution 454, the Assassination Materials Disclosure Act of 1992": Hearings before the Legislation and National Security Subcommittee of the House Committee on Government Operations, 102nd Cong., 2nd Session (1992) (to be printed) [hereinafter cited as "Hearings, April 28" or "Hearings, May 15"]; Mr. Hamilton testified on April 28.

² Those investigations include the President's Commission on the Assassination of President Kennedy (the Warren Commission), the President's Commission on CIA Activities within the United States (the Rockefeller Commission), the Select Committee to Study Governmental Operations with Respect to Intelligence Activities of the Senate (the Church Committee), and the Select Committee on Assassinations of the House of Representatives (the Assassinations Committee). The records of these investigations will be discussed further in this report.

about the murder. These differing conclusions have only further raised the specter of uncertainty in the public's mind.

On November 29, 1963, President Lyndon Johnson established by executive order the Warren Commission. Relying primarily on Federal and State investigative agencies, the Warren Commission presented its report and 26 volumes of appendices to the President on September 14, 1964. The Warren Commission concluded:

The shots which killed President Kennedy and wounded Governor Connally were fired from the sixth floor window at the southeast corner of the Texas School Book Depository.³

The weight of evidence indicates that there were three shots fired.

The shots which killed President Kennedy and wounded Governor Connally were fired by Lee Harvey Oswald.

There was no evidence that either Lee Harvey Oswald or Jack Ruby was part of any conspiracy, foreign or domestic, to assassinate President Kennedy.

On the basis of the evidence before it, Oswald acted alone.³

The Rockefeller Commission was established by an executive order signed by President Ford on January 5, 1975, with the mandate to determine whether any domestic activities of the Central Intelligence Agency exceeded the agency's statutory authority. The Rockefeller Commission investigated and rejected allegations that employees of the CIA were involved in the assassination of the President.

In particular, allegations had been made based on photographs that Watergate burglars E. Howard Hunt (then a covert employee of the CIA) and Frank Sturgis were in Dallas on November 22, 1963, working for the CIA. After reviewing the photographs involved, the Commission rejected this allegation. "On the basis of the staff's investigation, the Commission concluded there was no credible evidence of any CIA involvement."⁴

The Church Committee was established by the Senate on January 27, 1975. In carrying out its mandate, the Committee assessed the performance of the intelligence agencies in investigating the assassination of President Kennedy. Specifically, the Committee examined the extent to which the intelligence agencies assisted the Warren Commission by supplying the Commission with information necessary to conduct its investigation. The Church Committee found that the agencies were less than forthcoming. In contrast to the definitive findings of the Rockefeller Commission and the Warren Commission, the Church Committee concluded that the Warren Commission investigation was fundamentally flawed.⁵ Specifically, the Church Committee found:

³ "Report of the President's Commission on the Assassination of President John F. Kennedy," September 24, 1964, pp. 18-23. Findings 1, 2, 4, 9 and 11.

⁴ Report to the "President by the Commission on CIA Activities within the United States," June 1975, p. 269.

⁵ See Johnston testimony, "Hearings," April 28.

The Committee has, however, developed evidence which impeaches the process by which the intelligence agencies arrived at their own conclusions about the assassination, and by which they provided information to the Warren Commission. This evidence indicates that the investigation of the assassination was deficient and that facts which might have substantially altered the course of the investigation were not provided the Warren Commission or those individuals within the FBI and the CIA, as well as other agencies of government, who were charged with investigating the assassination.⁶

The House of Representatives established the House Select Committee on Assassinations on September 17, 1976. The House Assassinations Committee subsequently concluded that a conspiracy was probably involved in the assassination of the President. While confirming the conclusions of the Warren Commission that Oswald had fired three shots at the President, that the second and third shots struck the President and that the third shot killed him, the House Assassinations Committee concluded that "[s]cientific acoustical evidence establishes a high probability that two gunman fired at President John F. Kennedy."⁷ Subsequent reexamination of the acoustical evidence has raised serious questions about the basis of this conclusion of the House Assassinations Committee.⁸ In addition, the House Assassinations Committee concluded that a conspiracy was probable: "[T]he committee believes, on the basis of the evidence available to it, that President John F. Kennedy was probably assassinated a result of a conspiracy."⁹

The preceding summary is set forth to illustrate the ambiguous and sometimes contradictory conclusions reached by official investigations of the assassination, and to provide the context for public misgivings concerning the death of President Kennedy.

Records compiled by official investigations

The four investigating bodies established at various times over the past 29 years have generated large quantities of records relating to the assassination. While the vast majority of records covered by the joint resolution were compiled by official investigations, they are by no means all of the records in the custody of federal agencies that are relevant to the assassination. A brief summary of the materials compiled by official federal investigations is presented here to clarify the nature and extent of the records to be consid-

⁶ "The Investigation of the Assassination of President John F. Kennedy: Performance of the Intelligence Agencies," Book V, "Final Report of the Select Committee to Study Governmental Operations with respect to Intelligence Activities," U.S. Senate Rep. No. 94-765, May 26, 1976, p. 6.

⁷ Summary of Findings and Recommendations, "Final Report of the Select Committee on Assassinations," U.S. House of Representatives Rep. No. 95-1828, p. 3.

⁸ In 1982, the Committee on Ballistic Acoustics of the National Research Council reviewed the acoustical evidence relied upon by the House Assassinations Committee and found that "the point on the tape where oscillating waves supposedly indicated the sounds of another shot actually occurred on the tape more than one minute after the assassination." David W. Beilin, "The Assassination of Earl Warren and the Truth," p. 3, Hearings of April 28, 1992, submitted for the record with the prepared statement of Howard P. Willens.

⁹ Summary of Findings and Recommendations, "Final Report of the Select Committee on Assassinations," U.S. House of Representatives Rep. No. 95-1828, p. 3.

ered by the Review Board.¹⁰ This summary is intended only to describe the records of those official investigations that are specifically covered by the joint resolution: it is in no way meant to be either inclusive or definitive.

The Committee recognizes that relevant records may have been compiled by other reviews undertaken by Federal agencies, as well as state and local law enforcement agencies, including the Dallas Police Department and the District Attorney's Office of Orleans Parish, Louisiana. The flexibility to review other relevant activities is recognized by the Committee on the broad discretion given the Review Board in Section 3(12)(A) of the joint resolution.

Records of the Warren Commission.—The records generated by the Warren Commission total some 1,000 boxes—equalling 363 cubic feet of materials. The records were transferred to the National Archives, where they subsequently have been periodically reviewed and released. These records include the minutes of Commission meetings, minutes of staff meetings, agendas, proceedings, transcripts of testimony, depositions, affidavits, correspondence, memoranda, summary reports relating to the assassination, summary reports relating to Lee Harvey Oswald, investigative reports, and other basic source materials submitted by various law enforcement agencies and private citizens. Approximately 98 percent of the records are available to the public.

Records of the Rockefeller Commission.—The National Archives through the Ford Library received 2,500 pages of materials from the Rockefeller Commission relating to the Kennedy assassination. Many of these records are classified and it is unclear how many, if any, have been made public.

Records of the Church Committee.—The Church Committee generated some 5,000 pages of records relating to its review of the assassination of President Kennedy. These records have remained in the custody of the Senate Select Committee on Intelligence, and have not been made available to the public.

Records of the House Assassinations Committee.—The House Select Committee on Assassinations generated some 414,000 pages of records relating to the Kennedy assassination, including interviews, transcripts of testimony, outside contact reports, materials from various agencies, income tax returns, medical records, and a variety of other materials. The Committee published a report and released some documents, but many of its records are deposited in the National Archives and, in accordance with routinely applied rules of the House of Representatives in place at the time, are generally unavailable for public release until 2029.

Records of the Central Intelligence Agency.—The CIA houses approximately 300,000 pages of records requested by the Assassinations Committee. Of those records, about 11,000 pages have been released. The Committee has not ascertained the extent to which there exist other CIA records relevant to the assassination.

Records of the Secret Service.—The Secret Service case file on the assassination contains some 11,000 pages, almost all included in the Warren Commission files.

¹⁰ For a detailed discussion of the records collected by these investigations, see Relyea testimony, Hearings of April 28, and Wilson testimony, Hearings of May 15.

Records of the Federal Bureau of Investigation.—The FBI has 499,431 pages of records relating to the Kennedy assassination. Less than half of them have been made public. The records are divided into four core files that relate directly to the assassination, the Bureau's cooperation with the Warren Commission, and its investigations of Oswald and Jack Ruby. In addition, another 22,000 pages of records relating to other investigations have been compiled.

The Review Board process

The Committee's intent in establishing the Review Board and the process by which it will operate is to make available to the public all materials relating to the assassination of President John F. Kennedy at the earliest possible date. It is the Committee's intent in reporting the joint resolution to create as simple a mechanism as possible for reviewing and releasing assassination records, while both guarding the Review Board's independence and preserving its flexibility.

As discussed above, there are numerous official investigations that compiled records clearly related to the assassination of President Kennedy and thus obviously within the scope of this joint resolution. Yet the Committee recognizes that other investigative work performed by federal, state and local entities may in fact be relevant even though it may appear to be unrelated. Likewise, the Committee recognizes that some investigative activities which appear to be relevant may not be.

The only efficient way of making such a determination is by reviewing the records in question. Thus, while the Review Board is required to consider the records of the investigations delineated above, the joint resolution grants it broad latitude and discretion to review records generated by other government activities not directly related to those investigations. The Review Board is authorized to make publicly available appropriate records secured from any source.

From the introduction of House Joint Resolution 454, executive agencies having custody of records pertaining to the assassination have been in contact with and expressed their views to both the original sponsors of the resolution and the Committee. The Committee is satisfied that all legitimate concerns raised by the executive branch relating to these records are adequately addressed in the resolution.

It is the Committee's intent that the Review Board process complement ongoing efforts to expedite the release of historical records, such as the recent declassification initiatives of the Central Intelligence Agency.¹¹ The Committee commends Director Gates for this effort and recommends that all other executive branch agencies with relevant records follow suit. The Committee notes that all executive branch witnesses pledged full cooperation with the release of assassination materials.

As envisioned by the Committee, all executive agencies have 60 days following the date of enactment of this joint resolution to com-

plete the identification of those records of official investigations that are in their custody and can be made public. During that same 60 day period, executive agencies shall transfer those records to the National Archives for inclusion in a publicly available President Kennedy Assassination Materials Collection.

It is the Committee's expectation that there will be no dispute that the vast majority of records of official investigations can be made public. It is the Committee's intent that executive agencies shall take the initiative and transfer these records to the Archivist for inclusion in the Collection as soon as possible.

On the 61st day after enactment of this joint resolution, the Review Board is authorized to begin reviewing the records made available by the executive agencies, as well as all of the records of the House Assassinations Committee and the Senate Church Committee.¹² This in no way precludes executive agencies from continuing to transfer as many records as possible to the Collection, and it is the Committee's intent that the agencies continue to do so.

The Review Board must presume that each record of an official investigation is relevant to the assassination unless there is clear and convincing evidence that the record is not relevant. The Review Board must also presume that each record that is relevant to the assassination can be made publicly available in the Collection unless there is clear and convincing evidence that its release must be postponed based on the specific privacy, national security, or law enforcement grounds delineated in the joint resolution.

It is the Committee's expectation that the Executive Director will play an active role in assisting the Review Board both in the review of the records and in discussions with executive agencies when concerns arise about publicly releasing specific records. It is the Committee's intent that the Executive Director will work closely with the agencies to resolve such concerns. The Committee stresses, however, that the Executive Director is established as an advocate of the Review Board, not of the agencies.

The Director must always operate under the same presumption as the Review Board, that a document should be made public unless there is clear and convincing evidence that it falls within a category for postponement of release. It is the duty of the Director to represent that position in any discussion with agencies.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the joint resolution's short title is the "Assassinations Materials Disclosure Act of 1992."

Section 2. Findings and purpose

The findings included in the substitute are intended to amplify Congress' specific concerns regarding records relating to the assassination, and to define the public interest intended to be furthered by adoption of the joint resolution.

¹¹ For a discussion of the CIA efforts to declassify historical records, see Gates testimony, Hearings of May 15.

¹² For the House and Senate records, there is no mechanism for self-review and release included in this resolution, and thus the Review Board must review all of these records.

Finding 1. Legitimate confidentiality concerns may justify the withholding of government records from the public. These concerns include national security, personal privacy, law enforcement and others. The Freedom of Information Act (FOIA) and other laws recognize these interests.

In every case, however, concerns that may justify the withholding of information today are less likely to apply in the future. For example, national security information is routinely reviewed and declassified as time passes. While the adequacy and timing of such reviews may be in dispute, and while the decisions reached in any particular instance may be contentious, there is no disagreement with the principle that all national security information should eventually be declassified and made available to the public.¹³

Statutory confidentiality protections also expressly recognize the need to strike a balance between secrecy and openness. For example, the FOIA exemptions for privacy contain an express balancing requirement. As the need for protecting personal privacy diminishes over time, the balance in any particular case may be tipped.

Similarly, the business confidentiality protections of the FOIA, as exemplified by the fourth exemption and as explained in the *National Parks* cases,¹⁴ recognize that secrecy is justified only as long as there is evidence of harm to the submitter. As time passes and the prospect of harm disappears, the justification for withholding disappears. Similar balances are expressly struck in other FOIA confidentiality protections, including the fifth exemption covering predecisional documents and the seventh exemption covering law enforcement records.

The Committee rejects the notion that there is justification in fact or in law for the perpetual withholding of any records. Prior to passage of the FOIA, it was generally understood that all government records would eventually be made public, even if release was postponed for 30, 50, or 75 years. The FOIA did nothing to change this understanding and, in fact, underscored the principle that all governmental records should become public when the justification for secrecy has lapsed.

The purpose of the FOIA is to make all government records that are not confidential available to requesters. When the justification for the withholding of any individual record disappears, the record must be disclosed. There is no justification for perpetual secrecy for any class of records. Nor can the withholding of any individual record be justified on the basis of general confidentiality concerns applicable to an entire class. Every record must be judged on its own merits, and every record will ultimately be made available for public disclosure.

These same principles apply with added force to records concerning the assassination of President Kennedy. It is the Committee's intent that House Joint Resolution 454 be implemented with full recognition that legitimate confidentiality concerns diminish over time.

¹³ The Congress recently acted to secure the regular declassification and release of records of the Department of State. See, e.g., 22 U.S.C. § 4351, regarding the publication of the Foreign Relations of the United States historical series.

¹⁴ 436 F.2d 765 (D.C. Cir. 1974); 547 F.2d 673 (D.C. Cir. 1976).

Finding 2. Finding 2 recognizes a compelling public interest in having all government records eventually made public. The principles of open government and an informed electorate are pivotal to the operation of a democratic society. It is the Committee's intent that House Joint Resolution 454 be implemented with full recognition of the compelling public interest that all government records be eventually made available to the public.

Finding 3. Finding 3 recognizes a compelling public interest in making all materials concerning the assassination available to the public at the earliest possible date. Continued unjustified secrecy and concealment of these records increases speculation about the assassination and fuels a growing distrust in the institutions of government. The Committee believes that prompt disclosure of all records relating to the assassination is the best way to fulfill the American people's right to know what happened to their President. It is the Committee's intent that House Joint Resolution 454 be implemented with full recognition of the compelling public interest that all materials concerning the assassination be made available to the public at the earliest possible date.

Finding 4. Finding 4 recognizes that Executive Order 12356, as implemented by the executive branch, has precluded the timely release of materials relating to the assassination. A significant portion of the records pertaining to the assassination are classified. The rules for classification in the interest of national defense or foreign policy have traditionally been established by executive orders issued by the President, not by the Congress.¹⁵ The Executive Order on National Security Information also contains a procedure for the declassification of documents at the request of the public.¹⁶ This is known as "mandatory review for declassification." Unfortunately, the mandatory review procedure has proved to be inadequate to secure the release of records that could be released without harm to national security interests.

First, the mandatory review process has been inadequately supported. The process is slow and ineffective, and there is inadequate oversight within the Administration.

Second, and more importantly, the standards for classification that were established in 1982 and remain unchanged today make it difficult for agencies to declassify information. In 1982, the Committee on Government Operations reviewed Executive Order 12356, and raised serious objections to the failure of President Reagan to inform and consult with Congress during its preparation and promulgation.¹⁷

At that time, the Committee also found that the Reagan security classification rules expanded the categories of information that were subject to classification and dropped previous provisions requiring the balancing of the public interest in disclosure against the national security need for secrecy. In general, the Committee found that the expansion of the security classification rules in 1982 was unjustified, and that the Reagan order gave classifiers vague

¹⁵ The classification of atomic energy information has, however, been regulated by Congress through the Atomic Energy Act. See, e.g., 42 U.S.C. § 2161 et seq.

¹⁶ Executive Order 12356, at § 3.3.

¹⁷ Security Classification Policy and Executive Order 12356," H. Rep. No. 97-731, 97th Congress, 2d Session (1982).

guidelines, few restrictions, and unnecessary additional classification authority.

On March 18, 1992, the Legislation and National Security Subcommittee of the Committee on Government Operations held a hearing on Government Secrecy after the Cold War, which examined the operation of Executive Order 12356. Sworn testimony at that hearing confirmed that the executive branch continues to improperly invoke governmental secrecy to withhold information that does not require protection.

The failure of the mandatory review procedures under Executive Order 12356 to secure the release of classified assassination records demonstrates that the order is too sweeping and fails to balance the public interest. The overbreadth of the Executive Order is one of the reasons legislation is necessary today to ensure the expeditious release of materials relating to the assassination of President Kennedy.

It is the Committee's intent that House Joint Resolution 454 be implemented with full recognition that Executive Order 12356, as implemented by the executive branch, has precluded the timely release of materials relating to the assassination.

Finding 5. Finding 5 recognizes that the Freedom of Information Act, as implemented by the executive branch, has failed to secure the timely release of information relating to the assassination. The FOIA provides a mechanism for the disclosure of agency records. Many records pertaining to the assassination of President Kennedy have been disclosed under that Act, but many executive branch records have also been withheld.¹⁸ Several factors have failed to secure the timely release of assassination records under the FOIA.

First, and most importantly, the executive branch has routinely made extensive and unjustified use of statutory exemptions to withhold information that no longer actually warrants protection. All FOIA exemptions are permissive, not mandatory—records that technically qualify for withholding can nevertheless be disclosed at the discretion of the agency. Unfortunately, agencies have been unwilling to use their existing authority to release documents that can be disclosed without harm to any significant public or private interest.

The practice of withholding documents when disclosure will result in no harm to any significant public or private interest is pandemic to the executive branch's implementation of the FOIA.¹⁹ This practice is reflected in the fact that there are hundreds of thousands of pages of unreleased documents relating to the assassination.

Second, both the agencies and the courts have been relying on presumptions—sometimes irrefutable presumptions—to justify the

¹⁸ For a discussion of the difficulties which researchers have had gaining access to Kennedy assassination records using the Freedom of Information Act, see the testimony of James H. Lessor, President, Assassination Archives and Research Center, before the Senate Committee on Governmental Affairs, May 12, 1992.

¹⁹ The administrative barriers to the release of information under the Freedom of Information Act have long been noted in Committee reports. See, e.g., "Paperwork Reduction and Federal Information Resources Management Act of 1990," House Rep. No. 101-527 at 65-66 (1990) (criticizing the Department of Justice for its FOIA guidance and lack of objectivity). There has been no improvement in the quality of Justice Department FOIA activities in the past few years.

withholding of information. This interpretation is directly contrary to the express language of the FOIA, which provides that "the burden is on the agency to sustain its action." Executive agencies, and the courts which conduct de novo review, are required by the FOIA to find facts in each individual case that justify withholding. Although any reliance on presumptions in wholly inconsistent with the language and the intent of the FOIA, such practices have become widespread and have prevented the release of records which may not actually qualify for withholding.

It is the Committee's intent that House Joint Resolution 454 be implemented with full recognition that the FOIA as implemented by the executive branch has failed to secure the timely release of information relating to the assassination.

Finding 6. Finding 6 concerns two specific Presidential commissions, the first known as the Warren Commission, and the second as the Rockefeller Commission, that reviewed the assassination. Both commissions were established by executive order and predate existing statutes governing Presidential records. This finding clarifies that the commission's records nevertheless are subject to such statutes.²⁰ It is the Committee's intent that House Joint Resolution 454 be implemented with full recognition that the President's Commission on the Assassination of President Kennedy and the President's Commission on CIA Activities in the United States were federal agencies whose records are subject to Federal records laws including this joint resolution.

Finding 7. Finding 7 recognizes that while there may be instances where records or portions of records concerning the assassination need to be kept confidential 29 years after the event, these instances will be rare. It is the Committee's intent that House Joint Resolution 454 be implemented with full recognition that only in the rarest cases is there any legitimate need for continued secrecy or classification of materials relating to the assassination.

Purpose

The purpose of the joint resolution is to make available to the public all materials relating to the assassination at the earliest possible date.

Section 2. Definitions

This section defines the terms used throughout the joint resolution.

The term "Archivist" refers to the Archivist of the United States.

The term "assassination material" applies only to those records which the Review Board has reviewed and determined to be assassination materials. This in no way limits the materials that may be included in the Collection or otherwise made publicly available by an executive agency or by the Archivist under the provisions of this joint resolution. The term does not include certain records donated by President Kennedy's family to the National Archives pursuant to a deed of gift dated October 29, 1966.

²⁰ 44 U.S.C. §§ 2201 et seq.

The joint resolution specifically excludes from the scope of records to be reviewed or released any item donated by the Kennedy family pursuant to this deed of gift. The deed of gift transferred custody of certain medical and autopsy materials to the National Archives, and makes those records available to government officials and others who have a legitimate need for access to them.

This exclusion encompasses all copies of any item donated by the Kennedy family pursuant to the deed of gift dated October 29, 1966. It is the Committee's intent that the Archivist shall accord any such copies the same treatment provided by this deed of gift.

The Committee believes that the mechanism established by the deed of gift provides for appropriate access to those records that is fully consistent with the purpose of the joint resolution. The public display of certain of those materials has already caused the family of the late President to suffer unwarranted pain and distress. Further disclosures of these materials would occasion additional unwarranted pain and distress to the family of the late President and cannot be justified. The Committee believes that the access provisions of the deed of gift strike the proper balance by allowing review while avoiding dissemination and exploitation of these materials.

The term "Collection" refers to the President Kennedy Assassination Materials Collection established by this joint resolution.

The term "custodian of records" refers to the official so designated either by this joint resolution or by the head of each executive agency which has records of official investigations in its possession. For records of the House Assassinations Committee, the custodian of records is the Committee on House Administration of the House of Representatives. For records of the Church Committee, the custodian of records is the Select Committee on Intelligence of the Senate. For the Warren and Rockefeller Commissions, the custodian of records is the Archivist.

The term "executive agency" encompasses in the broadest sense all authorities and establishments within the executive branch of the federal government, and includes the Executive Offices of the President and Vice President and all of their respective components.

The term "Executive Director" refers to the Executive Director of the Review Board.

The term "House Committee" means the Select Committee on Assassinations of the House of Representatives, popularly known as the House Assassinations Committee.

The term "National Archives" means the National Archives and Records Administration.

The term "originating body" means the agency, commission or Congressional Committee that either created a record or obtained a record from a source other than another entity of the Federal Government. The originating body may be different than a custodian of records. For example, the FBI may have in its files a record of the Secret Service, and for purposes of this joint resolution may be the custodian of that record though not the originating body.

The term "public interest" includes those interests set forth in Findings 2 and 3, which find that there is a compelling importance in the public availability of government records. Although the term

is not limited to those specific interests, it is the Committee's intent that it be inclusive only of interests favoring the disclosure of information. Any public interest which an executive agency may contend lies in the nondisclosure of a record shall be taken into account only as evidence supporting the specific criteria for postponement of release contained in Section 7(a). It is the Committee's intent that in each case the public interest in disclosure shall only be weighed against the evidence supporting the application of a specific criteria for postponement.

The term "record" is defined in its broadest sense. The definition varies from the existing definition found in 44 U.S.C. § 3301. Obsolete or unjustified parts of the existing definition have been deleted, and language has been added clarifying that electronic records fall within the definition. Although the Committee believes that all forms of electronic records already fall within the existing definition, this express language is included to clarify the intent of Congress that the term "record" is a broad and encompassing one. The addition of express language here should not be taken as any indication of a narrower interpretation of the existing definition. Changing information technology has identified additional categories of records, and the express recognition of these new categories clarifies rather than expands the existing definition.

The term "record of an official investigation" is intended to define the universe of material subject to this joint resolution. It includes records created, obtained, or generated by each of the governmental reviews of the assassination as well as records of agencies supporting those reviews. The term recognizes the discretion that the Review Board must have in determining whether a record is relevant to the assassination, and thus specifically includes the records of any other governmental activity which the Review Board finds relevant to the assassination, such as the investigations of the Dallas Police Department and the District Attorney of Orleans Parish, Louisiana.

Therefore, while the Review Board must include the records of those official investigations that are specifically identified in the joint Resolution, it may also determine that records not specifically delineated may nevertheless be relevant. It is the Committee's intent that the Review Board consider any other records brought to its attention by members of the public in making such determinations.

The term "Review Board" refers to the Review Board established by this joint resolution.

The term "Senate Committee" means the Select Committee to Study Government Operations With Respect to Intelligence Activities of the Senate, popularly known as the Church Committee.

Section 4. President Kennedy assassination material collection

Section 4(a) establishes in the National Archives a central repository of assassination records made publicly available under this joint resolution. The Archivist is required to establish this Collection within 60 days of enactment of the joint resolution.

Section 4(b) specifies what records shall be included in the Collection, and grants the Archivist broad discretion to include other appropriate records in the Collection. The Archivist may organize and

house the Collection, in any place or places and in any manner that he deems appropriate. In particular, it is the Committee's intent to grant to the Archivist broad discretion in organizing and housing any assassination materials that are currently part of other collections maintained by the National Archives, so that the ability of the National Archives to perform its responsibilities under other provisions of law is not impaired.

Section 4(c) requires the Archivist to make all records in the Collection available to the public both for review and for copying. Since copies of the records in the Collection may still be retained by the executive agency which originated the record, all executive agencies as well as the Archivist must charge fees and grant fee waivers pursuant to the provisions of the Freedom of Information Act.

It is the Committee's intent that assassination materials of broad historic interest be made widely available through publication by the Government Printing Office as provided in Section 4(d). It is the Committee's expectation that the grounds for fee waivers granted by the National Archives will be significantly narrowed by the publication of such materials. The Committee further intends that in complying with Section 4(c), the Archivist shall exercise sound discretion in the granting of fee waivers so that the ability of the National Archives to perform its responsibilities under other provisions of law is not impaired.

Section 4(d) authorizes the National Historical Publications and Records Commission to provide for the selection and publication of records that are of broad historical interest. The Commission may determine that the most appropriate method of selecting such records is to award one or more grants to qualified historians to make selections for publication or to convene an advisory panel of historians and scholars to make these selections. Section 4(d) also provides for the printing and distribution of publications selected by the Commission. Selecting and publishing government records is part of the existing function of the Commission, and any funds made available to it may be used to fulfill the responsibilities set out in the joint resolution.

Section 5. Transfer or availability of records of official investigations

Section 5 provides two options for records covered by this joint resolution: records can either be transferred to the Archives for inclusion in the public collection or else be made available to the Review Board for review and then inclusion in the Collection. It is the Committee's intent that any record whose release is postponed will subsequently be released to the Collection.

Section 5(a) authorizes executive agencies to transfer assassination records to the Collection for public release. Any record of an official investigation not transferred to the Collection within 60 days automatically becomes available to the Review Board. The agencies can still transfer records to the Collection after the 60-day period; however, those records that can be made public should be released by the agency itself within the first 60 days. It is the Committee's intent that all agencies possessing records of official investigations work as quickly as possible to identify and to release to

the Collection those records which can readily and obviously be made public.

The Committee notes that certain papers of some members of the Warren Commission have been transferred to the Archives. The Archivist should review such papers during the 60-day period for inclusion in the Collection.

If there are any delays in establishing the Review Board, in appointing its members, or in the confirmation process, agencies may use these periods to extend the review of assassination materials. The Committee believes that the public interest is advanced to the extent that records can be directly released to the Collection by agencies without the need for action by the Review Board. The goals are to maximize immediate public disclosure and to minimize the workload of the Review Board. Any actions that executive agencies can take to accomplish the goals of the legislation will serve the public interest. However, at the end of the statutory 60 day period, no agency can block Review Board access to assassination materials.

The Committee notes that some agencies, such as the Central Intelligence Agency, have already begun to review and release assassination materials. Section 5(a) is not intended to preclude agencies from continuing any on-going reviews and transferring records to the Archives for inclusion in the Collection. The Committee encourages such reviews to continue since they can provide for more expeditious release of assassination materials to the public.

Section 5(b) requires that all House and Senate records be made available to the Review Board. This subsection serves as House and Senate approval of the release of each bodies' respective assassination records. Due to the unique status of these select committees, no mechanism currently exists outside of the Review Board for reviewing these records. The Committee therefore encourages the Review Board to make these records a priority for review and inclusion in the Collection.

Section 5(c) requires executive agencies to release a record for inclusion in the Collection within 60 days of a Review Board determination that a record is relevant to the assassination and a recommendation that it be released, unless the President overrules that recommendation in accordance with Section 7(b).

Section 6. Review by Review Board

Section 6 provides for reviews by the Review Board and the contents of and standards applied to the determinations and recommendations made by the Board.

Section 6(a) requires the Review Board to review all records made available to it by the express terms of the joint resolution. It further requires the Review Board to review other records which it has reason to believe may be relevant to the assassination.

Section 6(b) requires the Review Board to place records into one of two categories: those relevant to the assassination, and those shown by clear and convincing evidence not to be relevant to the assassination. The question of whether a record should be released to the Collection immediately or postponed only arises for those records determined by the Review Board to be relevant to the as-

assassination. Thus, that determination is the key first element in the Board's review.

There is a presumption that each record of an official investigation as defined in Section 3 is relevant. The Review Board must make a specific determination for records that an executive agency asserts to be unrelated to the assassination. The Committee anticipates that agencies will take such a position in very few cases. In those few cases the Review Board must find, pursuant to Section 6(c), by clear and convincing evidence that a record is not relevant in order to conclude that the record is not an assassination material.

By using the term "relevant" and relying on a "clear and convincing" standard, the Committee intends to broadly include all records which have some bearing on the assassination of President Kennedy and which should be part of the publicly available Collection.

The Committee recognizes that the House Assassinations Committee as well as other official investigations explored numerous leads which did not identify any facts concerning the assassination. Yet the absence of a causal connection to the assassination does not preclude the Review Board from determining that it is nevertheless relevant. The mere fact that an official investigation explored an avenue of inquiry may be important to the public, historians and scholars, and therefore relevant.

That there may be privacy concerns of individuals who are identified in records of such investigation, or that confidential law enforcement or intelligence sources were utilized, should not color the Review Board's determination. Adequate safeguards exist in Section 7(a) for protecting such information.

The Board must then recommend whether a record which is an assassination material should be transferred to the Archivist for inclusion in the Collection. The Review Board must presume, pursuant to Section 6(d), that assassination materials shall be transferred to the Archivist for inclusion in the Collection. The Review Board can only delay release of assassination materials if by clear and convincing evidence it finds that the material qualifies for postponement of release under the criteria set forth in Section 7(a). Each determination and recommendation must with specificity identify the record in question and set forth the reason for the termination or recommendation. When recommending the transfer of assassination material to the Collection, the Review Board shall submit such recommendation to the custodian of records for that record, and, if different, to the originating body.

The Committee recognizes that there may be instances in which a record is the product of two or more agencies, although it is in the custody of only one agency. In such instances, the Review Board shall submit its recommendation to each agency.

Section 6(c) requires the Review Board to determine that a record of an official investigation is an assassination material, unless there is clear and convincing evidence that the record does not have any relevance to the assassination of President Kennedy. Section 6(d) similarly requires the Review Board to recommend that assassination material be transferred to the Collection, unless

there is clear and convincing evidence that the material qualifies for postponement under the criteria set forth in Section 7(a).

The Committee carefully selected the clear and convincing evidence standard as the appropriate measure for judging whether a record has relevance to the assassination and whether it meets any of the specified grounds that may justify postponement of its release. In light of the express purpose of the joint resolution—to make available to the public all materials relating to the assassination of President Kennedy at the earliest possible date—the Committee concluded that less exacting standards, such as substantial evidence or a preponderance of the evidence, were not consistent with the legislation's stated goal. On the other hand, the Committee concluded that imposing the most exacting standard—evidence proving a proposition beyond a reasonable doubt—would effectively preclude meaningful review and protection of other legitimate interest by the Review Board.

Section 6(e) requires the Review Board to review and to release any portion of assassination materials that can be reasonably segregated from materials qualifying for postponement of release. The Committee intends that such separate review be the rule and not the exception for all records qualifying for postponement of release.

For example, if an individual's name would qualify for postponement of release under the criteria set forth in Section 7(a)(3), it should not be presumed that the entire record qualifies for postponement of release. The removal of the individual's name, or where necessary the minimum amount of information that would identify that individual, should allow the release of the record.

Likewise, in the rare case of a portion of a record that would affect the national security and would qualify for postponement of release under Section 7(a)(1), only the minimum amount of information should be removed before that record is released to the Collection. For example, minimal excisions of the identity of a covert intelligence agent or of a sensitive intelligence source requiring protection under Section 7(a)(1) of the joint resolution should allow the release of the record.

Section 6(f) requires the Review Board to provide certain determinations and recommendations to the Archivist for inclusion in the Collection. The Committee's intent is that the Collection be as complete as possible. If inclusion of a particular assassination material is postponed, there should be a documented reference to that fact, including a description of the material and the reason it is not in the Collection. The Review Board shall submit to the Archivist each determination that a record of an official investigation is not an assassination material and each recommendation that release of assassination material be postponed.

Section 7. Postponement of transfer of assassination material

Section 7 establishes the criteria and the procedure that the Review Board must follow in recommending postponement of release of any assassination material.

Section 7(a) sets forth the specific criteria for postponement. There are five categories of criteria for postponement, any one of which must be met for the Review Board to issue such a recommendation.

Section 7(a)(1) establishes the criteria for postponing the release of material that would adversely affect the military defense, intelligence operations, or conduct of foreign relations of the United States. A significant number of records relevant to the assassination of President Kennedy are classified pursuant to an executive order and thus have not been made public.²¹ Throughout the legislation and National Security Subcommittee hearings on the joint resolution, there was a consensus by all witnesses that most, if not all, of these records can be made available to the public without causing harm to the national security. The Committee has adopted the criteria included in Section 7(a)(1) and not relied on the Executive Order because the Committee finds that Executive Order 12356, as implemented by the executive branch, has precluded the timely release of assassination materials.²²

The Department of Justice has argued that Executive Order 12356 is based on the executive's constitutional authority to control the dissemination of national security information, and does not call for a balancing of national security and any other public interest.²³ That only the executive can constitutionally set standards, and conditions for the control of national security information, however, has long since been argued and rejected. As stated in *EPA v. Mink*,²⁴ the legislative branch can set its own classification standards.²⁵

Indeed, Congress has most recently done exactly that in the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993.²⁶ Title IV of that Act establishes a Review Board for declassifying and publishing pertinent records in the Foreign Relations of the United States historical series. The Act sets forth specific criteria for evaluating whether documents should be published. Where appropriate, the Committee has adopted standards in the joint resolution that reflect those in the Foreign Relations Authorization Act. Section 7(a)(1) establishes a balancing test for records that would reveal three specific types of information relating to national security. In each case, the Review Board must consider whether the threat to the nation's military defense, intelligence operations, conduct of foreign relations outweighs the public interest in releasing the material. It is the Committee's intent that great weight be given to the public interest in the release of all assassination materials.

The Board cannot postpone release because it might cause some conceivable or speculative harm to national security. Rather, in a democracy the demonstrable harm from disclosure must be weighed against the benefits of release of the information to the public.

²¹ The current standards for classification and review for declassification are set forth by Executive Order 12356.

²² For a general discussion of executive branch practices concerning Executive Order 12356 and classification, see "Government Secrecy after the Cold War," Hearing before the Legislation and National Security Subcommittee of the Committee on Government Operations, U.S. House of Representatives 102d Cong. 2d Sess., March 18, 1992.

²³ See April 27, 1992, Letter to Chairman Conyers from Assistant Attorney General W. Lee Rawls, expressing the Department of Justice views on House Joint Resolution 454.

²⁴ 410 U.S. 73 (1973).

²⁵ "Congress could certainly have provided that the Executive Branch adopt new classification procedures or it would have established its own procedures." *Id.*

²⁶ Public Law 102-138.

Such a balancing test is not new. It appears in the procedures for releasing information in the rules of the Permanent Select Committee on Intelligence of the House of Representatives²⁷ and was part of the executive order on classification issued by the Carter Administration.²⁸ In considering the public interest, the Review Board must carefully weigh the specific interests delineated in the findings of the joint resolution.

Any one of three specific types of information must be revealed for the Review Board to consider postponement under this balancing test:

- (1) An intelligence agent whose identity currently requires protection.
- The term intelligence agent includes an employee or contractor who was utilized in a covert capacity by a United States intelligence organization.
- (2) An intelligence source or method which is currently utilized or reasonably expected to be utilized and which has not been officially disclosed, but which would if disclosed interfere with the conduct of intelligence activities.
- This very narrow type of information does not apply to any obsolete collection method, or to a method which has been acknowledged by the government.
- (3) Any other matter currently relating to the nation's military defense, intelligence operations, or conduct of foreign relations.

It is the Committee's intent that this ground be narrowly applied to sensitive matters only where disclosure would occasion significant, demonstrable harm to these interests. Section 7(a)(1)(C) thus contains a threshold requirement that the disclosure of such information would demonstrably impair the national security of the United States.²⁹ For example, information concerning an on-going unacknowledged liaison relationship with the intelligence service of another nation might qualify under Section 7(a)(1)(C). Any agency claiming such a reason for postponing the release of a record must present evidence to the Review Board demonstrating the damage that would be caused to the national security before the Review Board can consider such a postponement. It is the Committee's expectation that this ground for postponement will only be invoked in the rarest of cases.

Director of Central Intelligence Robert W. Gates testified that the protections in the joint resolution as introduced for intelligence-related information provide adequate safeguards.³⁰ The changes adopted by the Committee in the amendment in this subsection are substantially similar to the original text of the joint resolution. The Committee is confident that the joint resolution contains adequate protections for information which, if made public, would cause harm to the national security.

²⁷ Rules Adopted by the Committees of the House of Representatives, 102nd Congress, "Committee on Rules, United States House of Representatives," pp. 295-304.

²⁸ Executive Order 12065, 43 Fed. Reg. 28949 (July 3, 1978).

²⁹ This requirement is similar to that in the Foreign Relations Authorization Act, Public Law 102-138, Section 404(b)(3).

³⁰ Gates testimony Hearing, May 19, 1992.

Section 7(a)(2) protects materials the release of which would identify a living individual who provided confidential information to the government if the release would pose a substantial risk of harm to that individual. This language is similar to that included in the Foreign Relations Authorization Act,³¹ and protects individuals who were, but are no longer, sources of confidential information or intelligence. It is the Committee's expectation that this ground for postponement will only be invoked in the rarest of cases.

Section 7(a)(3) provides a narrow ground for postponing the release of assassination materials if public availability could reasonably be expected to constitute an unwarranted invasion of personal privacy so substantial that it outweighs the public interest. The Committee adopted this narrow privacy ground because the Freedom of Information Act privacy exemption, as interpreted by the executive branch, has prevented the disclosure of records long after any viable privacy concern has expired.

The Government's policy of withholding information on the grounds of personal privacy has been highly inconsistent. The general practice has been to withhold virtually any personal information that is the subject of a Freedom of Information Act request, while at the same time to allow very broad "routine uses" of personal information.³² The inconsistency in the way that agencies approach privacy has not been adequately addressed or considered.³³ These problems with the implementation of the Freedom of Information Act privacy exemption have contributed to the development of the privacy standard in House Joint Resolution 454. First, the word "clearly" that appears in the Freedom of Information Act privacy exemption has been deleted. While court decisions contain some discussion of the difference between "clearly unwarranted" and "unwarranted" as used in various FOIA exemptions, it appears to have little real significance.

Second, House Joint Resolution 454 includes an additional requirement to those in the FOIA privacy exemption—any invasion of privacy must be so substantial that it outweighs the public interest in disclosure. This requirement emphasizes that there is a balancing of interests required and that the standard that must be met to justify withholding is much higher than that recognized under the FOIA. The "substantial" test is intended to make it con-

siderably more difficult to withhold information on the grounds of privacy and is appropriate here because of the large amount of time that has passed since the Kennedy assassination.

Third, the public interest in disclosure of Kennedy assassination materials is expressly set out in the findings of the bill. In striking the required balance between personal privacy and the public interest in disclosure, these findings place a heavy weight on the disclosure side of the scale. The specificity of House Joint Resolution 454 is required because of the failure of the agencies and the courts to give adequate weight to the public interest in disclosure when implementing the Freedom of Information Act.

Section 7(a)(4) protects assassination materials if their release would constitute a "substantial and unjustified violation of an express, documented understanding of confidentiality" between a government agency and an individual or a foreign government. This standard is intended to protect law enforcement activities that rely on the cooperation of confidential informants or the confidential assistance of a foreign law enforcement agency.

The Committee recognizes that law enforcement agencies must to some degree rely on confidential sources to effectively perform their missions. However, the Committee specifically rejects the proposition that such confidentiality exists in perpetuity. As with all other government information, the government's legitimate interest in keeping such information confidential diminishes with the passage of time.

The Committee has chosen the joint resolution's language very carefully. The promise of confidentiality that an agency wishes to protect must be express, that is, clear to both the informant and to the Review Board. Such a promise must also be documented contemporaneously with the discussion between the agency and the informant. In determining whether release of a record should be postponed, the Review Board must consider whether the release would constitute a substantial and unjustified violation of such an understanding.

For guidance in this area, the Committee has turned to the Supreme Court's ruling in *Roviaro v. United States*,³⁴ the seminal opinion on the government's privilege to protect the identities of confidential informants. The Court there held that "no fixed rule with respect to disclosure is justifiable."³⁵ While the questions involved in releasing assassination materials differ from those found in the Constitution's sixth amendment guarantee of a right to a fair trial, the Court's solution is instructive—there must be a balancing:

The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the

³¹ Public Law 102-138.

³² Earlier Committee reports have addressed some of the general shortcomings of agency implementation of the Privacy Act of 1974. See Committee on Government Operations "Who Cares About Privacy? Oversight of the Privacy Act of 1974 by the Office of Management and Budget and by the Congress," House Report No. 98-455, p. 66-68 (1983); "Paperwork Reduction and Federal Information Resources Management Act of 1990," House Report No. 101-927 (report to accompany H.R. 3695) (1990).

³³ The Supreme Court added to the confusion about the Freedom of Information Act privacy exemption in *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). In ruling on the availability of a police "rap sheet," the Supreme Court stated that the central purpose of the FOIA is "to ensure that the Government's activities be opened to the sharp eye of public scrutiny, not that information about private citizens that happens to be in the warehouse of the Government be so disclosed" (original emphasis).

The Committee disagrees with this characterization; the purpose of the Freedom of Information Act is to make available any information that does not require withholding to protect a valid governmental or private interest. Evaluating the purpose of a request, as suggested by the Court, is incompatible with the structure, procedures and goals of the Freedom of Information Act.

³⁴ 353 U.S. 53 (1957).

³⁵ *Id.* at 62.

possible significance of the informers testimony, and other relevant factors.³⁶

It is the Committee's intent that this same balancing approach be applied to the handling of records involving confidential informants under the joint resolution. Thus, in weighing whether an informant's identity must still be protected, the Review Board must look beyond a law enforcement agency's blanket assertion of confidentiality. Claims of implicit confidentiality or blanket assertions that all sources of information are confidential informants *do not* satisfy the requirements of the joint resolution.

Roviaro also disposed of claims that known informants or deceased informants should be protected. As the Supreme Court stressed, the informant's privilege is based on the risk that the informant faces if his identity were to become known—"once the identity of the informer has been disclosed to those who would have cause to resent the communication, the privilege is no longer applicable."³⁷ In addition, the Court noted that the privilege would not apply if the informant were dead: "The record contains several intimations that the identity of John Doe was known to petitioner and that John Doe died prior to the trial. In either situation, whatever privilege the Government might have had would have ceased to exist* * *."³⁸

Only by weighing the various factors involved in each case can the Review Board decide whether disclosure of informant information is a substantial and unjustified violation of a confidentiality pledge. The Committee is confident that the balancing approach in the joint resolution provides adequate protections for confidential informants who still require anonymity. It is the Committee's expectation that, with the passage of time, all relevant informant information will be released under this standard.

Section 7(a)(5) protects information that would reveal a security or protective procedure of the Secret Service and other government agencies responsible for protecting the President and other officials. Only procedures that are currently utilized, or reasonably expected to be utilized, are protected, and then only if the disclosure would be so harmful as to outweigh the public interest.

It is difficult to conceive of a protective or security method employed nearly 30 years ago, in a situation that resulted in the murder of a president, which still merits protection. Nonetheless, the Committee recognizes that such a situation might exist, and provides this narrow and limited protection should such an unlikely case arise.

Section 7(b) provides for the methods by which the President, the Senate, or the House of Representatives may postpone the release of assassination materials notwithstanding a recommendation by the Review Board.

The Committee includes these provisions, not because it anticipates that the Review Board's recommendations will be overruled,

but to respect the Constitutional responsibilities of Congress and the doctrine of separation of powers. Thus, while the Review Board may provide recommendations to each House of Congress concerning their respective records, each House retains the final authority to release or to withhold its records.

In the case of records which the Review Board recommends should not be released pursuant to the joint resolution, each House clearly has the authority to release those records by passage of a simple resolution to that effect. Likewise, Section 7(b) (1) and (2) preserve each body's authority not to release such records.

The executive branch is accorded equal treatment. The President can clearly release any executive branch records at any time—regardless of a Review Board recommendation to postpone release—so long as such release does not violate existing law. So too does Section 7(b)(3) of this joint resolution protect the President's authority not to release records.

The authority of the President and each House of Congress to withhold assassination materials is limited, however. Section 7(b) requires that in order to prevent release of material as recommended by the Review Board, the Senate or the House of Representatives must certify by a majority of members present and voting that the record in question qualifies under the standards in Section 7(a). Nor can the President withhold executive branch materials unless he certifies that they qualify for postponement under Section 7(a). Thus, the President and Congress are limited in their ability to postpone the release of records to the same standards relied on by the Review Board. It is the Committee's expectation that Section 7(b) will seldom, if ever, be invoked.

Section 7(c) requires that if the President postpones the release of executive branch records which the Review Board has recommended be released, he must provide a statement to that effect to the House, the Senate, and the Archivist for inclusion in the record. The President also must publish that statement in the Federal Register.

Section 7(d) authorizes the Review Board to prepare and to submit a summary of any assassination material whose release has been postponed to the Archivist for inclusion in the Collection. The Committee intends for the Review Board to submit such summaries in every appropriate case for postponed materials.

Section 8. Marking and review of postponed materials

Section 8 establishes a system for reviewing assassination materials subject to postponed release. The Committee intends that all assassination materials eventually be made public and thus a system for continued review is necessary. Because the duration of the Review Board is limited, the Archivist is the most appropriate official to perform this function.

Section 8(a) requires the Review Board to mark assassination materials subject to postponed release. The Review Board is also to attach to the material a statement of a specified time at which, or a specified occurrence following which, the material should be reconsidered for inclusion in the Collection.

Section 8(b) requires the Review Board to transfer all marked material and appendices to the Archivist.

³⁶ *Id.* Accord *Black v. Sherrington Corp. of America*, 584 F.2d 550, 555 (D.C. Cir. 1977); *United States v. Danonaro*, 877 F.2d 583, 588 (7th Cir. 1979); *United States v. Apher*, 139 F.R.D. 129, 135-36 (D.Neb. 1991); *United States v. Maestas*, 941 F.2d 273 (5th Cir. 1991).

³⁷ *Id.* at 60.

³⁸ *Id.* at n8.

Section 8(c) requires the Archivist to review the postponed materials and appendices at the specified time or after a specified occurrence. If at that time the Review Board is still in existence, the Archivist is to resubmit the material to the Board. If it is not in existence, the Archivist is to submit the material to the originating body. It is the Committee's intent that the Archivist be vigilant, and that the Review Board or the agencies re-evaluating such materials operate under the criteria for release set forth in the joint resolution.

Section 9. Public availability of other information

Section 9 authorizes the Review Board to seek the release of relevant records not otherwise included in the scope of this joint resolution.

Section 9(a) authorizes the Review Board to petition courts in the United States and in foreign countries to release relevant information held under seal. Section 9(b) authorizes the Review Board to petition United States courts for relevant information which may be under the injunction of secrecy of a grand jury.

The Review Board should not undertake to petition a court using its own counsel until after it has requested that the Department of Justice do so.

Section 9(c) requires the Review Board to seek access to certain autopsy materials and to report on their status to the Congress.

Section 9(d) directs the Attorney General to assist in good faith to unseal records held under seal or under the injunction of secrecy of a grand jury. It also directs the Secretary of State to seek records from certain Russian entities and the heads of executive agencies to cooperate fully with the Review Board.

Section 10. Assassination materials review board

Section 10(a) establishes the Review Board as an independent agency within the executive branch.

Section 10(b) provides for five Review Board members to be appointed within 60 days of the date of enactment by the President and confirmed by the Senate. The president shall designate one such member as Chairperson. Members shall be appointed without regard to political affiliation from among distinguished and impartial private individuals who are U.S. citizens.

Section 10(c) provides for the appointment by the President of an Executive director of the Review Board, with confirmation by the Senate.

Section 10(d) prohibits any individual who has had any involvement with any official investigation identified in Section 3(12) (A) or (B) from serving as member of the Review Board or as Executive Director. The Committee included this prohibition to help ensure the credibility and independence of the Review Board, and to preclude conflict of interest allegations that would inevitably arise if such persons were appointed.

Section 10(e) requires the President, before nominating members of the Review Board and the Executive Director, to solicit and to consider recommendations from a variety of diverse representatives of general and scholarly interest in assassination materials, including ten specific associations and groups. Since Section 10(b)

requires the President to make such appointments within 60 days of enactment, he is only required to consider recommendations that are provided in a timely fashion.

Section 10(f) provides for compensation and travel expenses for members of the Review Board and the Executive Director.

Section 10(g) provides that members of the Review Board can only be removed for cause, and that the President shall submit a report to Congressional Committees specifying the reasons for such removal.

Section 10(h) vests continuing oversight responsibility for the Review Board in the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate.

Section 10(i) provides for general support services and details for the Review Board.

Section 10(j) authorizes the Review Board to issue interpretive guidelines to assist in implementing the purposes of this joint resolution. The Committee does not intend for the Review Board to engage in notice and comment rulemaking as contemplated by the Administrative Procedure Act³⁹ in issuing its interpretive guidelines. The Committee does encourage consultation by the Review Board with a variety of diverse representatives of general and scholarly interest in assassination materials, including those identified in Section 10(e).

It is the Committee's intent that with a minimum of formality the Review Board shall promptly adopt and make publicly available any necessary interpretive guidelines. Among the topics which the Review Board may wish to address in such guidelines are coordination with executive branch agencies, security procedures, and personnel clearance procedures. It is the Committee's intent that the Review Board exercise broad discretion in the management of its affairs through interpretive guidelines, but any delay in issuing such guidelines should not be allowed to delay the release of assassination materials.

Section 10(k) provides for the termination of the Board. The Board terminates on the date which is two years after the date of enactment of this joint resolution. However, the Board may extend its term for an additional 1-year period if it has not completed its work. The Board may only need an additional period that is less than one year, in which case the Board may terminate at that time. In any case, the Board must provide written notice of its intent to terminate at least 30 days prior to doing so. All of its records are transferred to the Archivist at the time of termination.

Section 10(l) provides the Review Board, the Executive Director, or a designee access to any record of an executive agency that is requested by the Review Board. Only the Review Board is authorized to determine whether a record is relevant to the assassination of President Kennedy, and thus all requests by the Board must be honored by all executive agencies. Section 10(l) also requires that any person who obtains access to a record under this joint resolution shall protect the required confidentiality of that record. The

³⁹ 5 U.S.C. § 553.

Review Board should provide security procedures under this section in the guidelines it issues under section 10(j).

The Committee intends to grant the Review Board wide latitude to determine what additional records are relevant to the assassination. Rather than attempting to define all records that are subject to this joint resolution, the Committee believes that this judgment is best left to the Board, which will be better able to identify all relevant records as its work progresses. The Committee does not intend to vest unfettered discretion in the Review Board to request any and all records of an executive agency without regard to their relationship to the assassination. The Committee expects that the Review Board will request only documents that in the Board's judgment may bear some reasonable relationship to the assassination.

Section 11. Rules of construction

Section 11(a) further enforces the intent of this joint resolution that release to the public of all assassination materials is the primary goal. Therefore, any provision of this joint resolution that requires public availability of a record shall take precedence over any other law that would otherwise prohibit such public availability. This preemption extends to statutory provisions, judicial decisions, common law doctrine, executive orders, and agency regulations. It is the Committee's intent that the narrow criteria set forth in Section 7(a) will be the only grounds upon which release of assassination materials can be postponed. It is further the intent of the Committee that the provisions of the joint resolution shall supercede all specific statutory protections of broad classes of records including, *inter alia*, classified information (5 U.S.C. 552(b)(1)), law enforcement records (5 U.S.C. §§ 552(b)(7), 552(c)), records involving personal privacy (5 U.S.C. §§ 552(b)(6), 552a), trade secrets (5 U.S.C. 552(b)(4), 18 U.S.C. § 1905), taxpayer information (26 U.S.C. § 6103), and intelligence sources and methods (50 U.S.C. § 403g).

Section 11(b) specifically addresses the Freedom of Information Act, and clarifies that nothing in this joint resolution shall eliminate or limit the right of an individual to file a request for material to any agency other than the Review Board or to seek judicial review pursuant to the Act, or to limit any requirement that an agency make assassination material public in accordance with the Act. The Review Board is not required, however, to process requests for assassination materials pursuant to the FOIA. Any such requests must be made directly to the originating body.

Section 11(c) clarifies that nothing in this joint resolution revokes or limits existing authorities or obligations of executive agencies or other government entities to make publicly available records in their possession, custody, or control.

Section 12. Congressional rulemaking authority

Section 12 clarifies that the provisions of the joint resolution affecting records of the House of Representatives or the Senate are adopted as an exercise of the rulemaking authority of each body, and recognizes the constitutional prerogative of each House of Congress to modify its rules relating to the procedures of that House.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 20(3)(A) of rule XI the Rules of the House of Representatives, the Committee reports that the findings of the Committee, based on oversight activities under clause 20(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report. These detailed findings are summarized in Section 2(a) of the joint resolution, as amended by the Committee.

Based upon its oversight findings, the Committee recommends that a single independent Review Board be established to make available to the public all materials relating to the assassination of President Kennedy at the earliest possible date. This recommendation is implemented in the provisions of Sections 3 through 12 of the joint resolution, as amended by the Committee.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 20(3)(B) of House rule XI is inapplicable because this joint resolution does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 20(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to House Joint Resolution 454, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 17, 1992.

Hon. JOHN CONYERS, Jr.,
Chairman, Committee on Government Operations,
House of Representatives, Washington, DC.

Dear Mr. CHAIRMAN: The Congressional Budget Office has reviewed House Joint Resolution 454, the Assassination Materials Disclosure Resolution of 1992, as ordered reported by the House Committee on Government Operations on June 3, 1992. We estimate that implementing this resolution would cost about \$5 million in each of fiscal years 1993 and 1994, and about \$5.8 million in 1995, assuming appropriation of the necessary funds. This resolution does not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply.

House Joint Resolution 454 would create as an independent agency the Assassination Materials Review Board to consist of five members and an Executive Director appointed by the President. The board would have the authority to examine any material held by a federal agency or the Congress that the board determines is related to the assassination of President Kennedy. The board would then decide whether the material should be transferred to the National Archives to be available to the public or whether the material qualifies for postponement for national security or privacy reasons. Depending on the source of the material, the House, Senate, or the President would be able to postpone the availability of mate-

rial that the board considers appropriate to make public. Federal agencies would be required to detail employees, without reimbursement, to the board to conduct its review. In addition, the board would be able to hire personnel as needed. The board would have two years to complete its work, but would be authorized to continue for a third year before it would expire.

CBO expects that the board would use all three years allowed to conduct its review. The primary expense stemming from this review would be the cost of employees detailed to the board and as well as those at several federal agencies who would have to read through the 1 million or so pages of documents relating to President Kennedy's assassination that are still not released. Based on information from the National Archives and other affected agencies about the likely process for reviewing the materials and the amount of time it would take, CBO estimates that the board would need a staff of up to 50 persons to review all the material within the three-year period. In addition, agencies that currently hold the material would need to assign staff to conduct a parallel review so that the President can decide whether to postpone the release of material that the board decides should be released. Such a parallel review could require the equivalent of up to 50 employees annually, although current efforts by the Central Intelligence Agency to review its assassination materials could reduce this number somewhat. Both sets of employees together represent about \$4.2 million in annual staff resources that would be applied to the work of the review board rather than the ongoing work of the employing agency.

The review board itself would require additional appropriations of about \$0.6 million annually for the director, a counsel, support staff, overhead, and the cost of board meetings. In addition, the National Archives, which eventually would receive all the releasable materials into a President Kennedy Assassination Materials Collection, would spend about \$600,000 over the next three years to compile a subject guide index to the materials in the collection to assist the public in locating materials. Finally, the Archives' National Historical Publications and Records Commission would spend \$0.5 million to \$1 million to select and prepare for publication and sale by the Government Printing Office facsimile volumes of those materials in the collection that are of broad historical interest. Such costs are likely to occur in 1995.

Enactment of this resolution would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is James Hearn, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that House Joint Resolu-

tion 454 will have no significant inflationary impact on prices and costs in the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, the Committee finds that House Joint Resolution 454 makes no changes in existing law.

○